SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD
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Amnesty International submits this briefing in advance of the September 2021 examination of Switzerland’s combined fifth and sixth periodic reports in respect of its implementation of the United Nations (UN) Convention on the Rights of the Child (Convention). It sets out Amnesty International’s concerns about Switzerland’s compliance with its obligations under the Convention in relation to cases of ill-treatment of unaccompanied minors in federal asylum centres and the implications of the new “law on police measures to counter terrorism”. As such, this briefing is not an exhaustive account of Amnesty International’s concerns regarding the implementation of the Convention by Switzerland.

TORTURE OR OTHER ILL-TREATMENT OF REFUGEE AND MIGRANT CHILDREN (ARTICLES 19 AND 37)

In May 2021, Amnesty International published its findings following research the organisation conducted into concerns about ill-treatment including some cases which may amount to torture occurring in Swiss Federal Asylum centres.1 The briefing titled “I ask that they treat asylum seekers like human beings. Human Rights Violations in Swiss Federal Asylum Centres”2 documents incidents of torture or other ill-treatment by employees of the private security companies Securitas AG and Protectas AG, who are contracted by the State Secretariat for Migration (SEM).

Amnesty International conducted in-depth research into violence against people seeking asylum that occurred between January 2020 and April 2021 in the centres of Basel, Giffers, Boudry, Altstätten and Vallorbe. The information in the briefing is based on interviews with 32 people, including fourteen victims of human rights abuse, eighteen current and former security guards, lawyers, social care workers and social educators who had witnessed abuse, as well as medical reports, criminal complaints and other relevant information and documents.

Amnesty International has additionally received information from other organisations that indicates further concerning reports of abuse occurring in the Asylum Region Ticino and Central Switzerland. It is important to note that we have not conducted any interviews or investigation to corroborate those reports. However, it is worth noting that the incidents of abuse alleged in those centres are similar in nature to those Amnesty International has documented in Basel, Giffers, Boudry, Altstätten and Vallorbe.

Fourteen asylum seekers, including two unaccompanied minors, reported being subjected to abuse at the hands of security guards. This included beatings, sustained force used that restricted their breathing to an extent that led them to suffering an epileptic seizure or loss of consciousness, and difficulties of breathing through the use of pepper gel, being locked in a metal container resulting in hypothermia and other abuses. Six of the people harmed this way required hospital treatment for their injuries and two were denied medical treatment even though they requested assistance. The cases and information collected for this briefing point to abuses that the organisation believe constitute torture or other ill-treatment and violate Switzerland’s obligations under international law.

Amnesty International is particularly alarmed by the lack of safeguards including robust and proactive monitoring and protection mechanisms by the SEM in federal asylum centres. According to accounts received by the organisation some guards write reports which are not accurate to the incidents of violence when they occur. The briefing found that the victims interviewed did not know where to turn to lodge a complaint, and that access to justice for victims of torture or other ill-treatment was fraught with obstacles. Moreover, no person who works or has worked in the centres was aware of any whistleblowing mechanisms. Some professionals, security staff and


legal representatives working at the centres expressed their doubts about the transparency, impartiality, efficiency and thoroughness of the SEM’s investigations into incidents of violence.

Although Amnesty International welcomes the State Secretariat for Migration’s willingness to examine the possibility of creating aombudspeople’s office and the mandating of an independent investigation⁵, it, however, urges the government to go beyond thinking that these acts of torture or other ill-treatment are just the actions of a few individuals and instead act to address urgent systemic issues and immediately take measures to prevent ill-treatment, eradicate racist abuse and protect the human rights of people in federal asylum centres.

Amnesty International would particularly like to draw the Committee’s attention to the cases it has documented of torture or other ill-treatment of children, including deeply worrying reports of them being beaten and locked in the “reflection room” by security guards, violating their human rights in multiple ways, as well as being contrary to the rules governing the use of the “reflection room”.⁶

An unaccompanied minor who stayed in a federal asylum centre at the beginning of 2020 told Amnesty International that he had been repeatedly beaten by security guards. He claimed that in one instance he was kicked by security guards until he was unconscious: “I was lying on the ground and they kicked me with their feet in my face, in the stomach and everywhere. I was bleeding from my nose and passed out. …(…)...The security guards took me to the reflection room and left me there until the evening.”⁷ In another instance, the minor was beaten in the ‘reflection room’ and was subsequently admitted to the children’s hospital where he received treatment. Amnesty International interviewed three other asylum seekers and one social care worker who worked in the centre where this incident occurred who said that the security guards had repeatedly attacked the adolescent.

Another unaccompanied minor, who was known to the social care workers and legal representatives to be usually of a very calm and cooperative disposition, explained to Amnesty International that in December 2020, a security guard who was on night shift had provoked him repeatedly. The security guard ordered him to hand over his phone or to spend the night in a separate room for forgetting to put on his mask before entering the building. While he was trying to sleep in this sparsely equipped room without a mattress, he took off his mask. When the security guards checked on him, they ordered him to put his mask back on and wanted to confiscate his phone. When he refused to give the phone, one of the guards struck him in the chest with his knee and he was pushed to the floor by two security guards. He told Amnesty: “I fell to the ground. One security guard was sitting on my feet and the other was on my back. They hit and kicked me in my back, belly, and face …(…)... I never tried to defend myself. I started to cry in pain …(…)... At the hospital they found that I had a swollen neck and face, three loose teeth and a swollen left foot. Both arms hurt a lot and I had red spots on my left arm.”⁸

It is worth noting that in a separate case, one of the legal representatives interviewed by Amnesty International said that she had witnessed force used against a child which in the legal representative’s view was totally disproportionate. The legal representative saw three to four guards push the screaming and crying child against a glass wall. This occurred in May 2020. Another legal representative told Amnesty that she knew the 15-year-old Asylum seeker: “I did not perceive him as violent. The way he was treated certainly aggravated the situation.”⁹ She further added: “The uniforms scare young people a lot. Moreover, the security guards are not trained in dealing with children. They treat them exactly the same as adults. They are just put straight into the ‘reflection room’.” The same legal representative explained to Amnesty that she was frustrated and concerned by the inefficient reporting mechanism to raise the alarm about allegations of ill-treatment of children: “You report it to the management and they go directly to the SEM …(…)... We cannot inform child protective services directly because they do not consider themselves competent. The SEM is in a dialogue with the child protective services, but they have not found a solution yet. Child protective services are over-burdened and the SEM has generally no idea about child protection. Since the SEM does not want the legal representatives to keep reporting endangerment of children’s welfare to child protective services, legal representatives first have to contact the SEM and seek internal solutions. The SEM can then report to the child protection authorities. Only if there is no report from the SEM, the legal representative could inform child protective services.”¹⁰

Subjecting children to “torture or cruel, inhuman or degrading treatment or punishment” is contrary to Art. 37 of the Convention. This is complemented and extended by article 19, which requires States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. According to the Committee “there is no ambiguity ‘all forms of physical or mental violence’ does not leave room for

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⁶ According to the SEM’s internal guidelines, the federal asylum centres have lockable rooms (‘reflection rooms’) in which asylum seekers who are deemed to pose a danger to themselves, to other asylum seekers or to staff can be temporarily detained. An individual is meant to only be locked in this room in compliance with certain rules, otherwise it is considered an unlawful deprivation of liberty. The confinement of a person in the ‘reflection room’ is to be permitted only if (1) at the same time the police is alerted; (2) it lasts until the arrival of the police or a maximum of 2 hours; (3) the SEM is informed; and (4) an incident report is drafted, which provides information about each time an individual is locked in the ‘reflection room’. According to the same guidelines, it is not permitted to detain children in the ‘reflection rooms’ (SEM, Betriebskonzept Unterbringung (BEKO), Version 2.0, 1 July 2020, p. 54, 10.6, https://www.plattform-ziab.ch/wpcontent/uploads/2020/09/SEM_BEKO_2020.pdf).

⁷ Interview conducted by Amnesty International with “Jamil”, 30 July 2020 (Name has been changed to respect the interviewee’s anonymity).

⁸ Interview conducted by Amnesty International with “Daouda”, 31 December 2020 (Name has been changed to respect the interviewee’s anonymity).

⁹ Ibid.

⁴ Interview conducted by Amnesty International with “Françoise”, 21 October 2020 (Name has been changed to respect the interviewee’s anonymity).

Ibid.
any level of legalized violence against children”.9 Torture and inhuman or degrading treatment or punishment includes “violence in all its forms against children in order to extract a confession, to extrajudicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors. Victims are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests. This includes (…) unaccompanied children.”10 As stated by the then United Nations High Commissioner for Human Rights: “Torture inflicts massive physical and emotional damage on the developing bodies and minds of children and adolescents. In addition to its sometimes very significant physical and cognitive impact, the experience of such profound helplessness may fundamentally impair the child’s ability to trust, to freely develop her or his personality and skills, and to navigate changing circumstances with confidence.”11

Amnesty International has not yet formed a view as to whether Federal Asylum Centres constitute deprivation of liberty. This Committee has been clear in its condemnation of immigration detention being used to penalise children: “The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.”12

Amnesty International is also concerned about reports on children and especially unaccompanied minors staying in federal asylum centres sharing facilities with adults. This is for instance currently the case of the federal asylum centre of Altstätten, where unaccompanied minors are housed in the same a building on a separate floor, which cannot always ensure separation between them and the adults. Furthermore, Amnesty is alarmed by the constant presence of security guards inside the accommodation for unaccompanied children in Altstätten, who are not the appropriate personnel to supervise children. Amnesty International has also expressed concerns in the past regarding children being subjected systematically to body searches when entering asylum centres.13

According to international human rights standards unaccompanied children who are not in adequate family-based care arrangements must be accommodated in their own reception facilities, separate from adults.14 Facilities receiving children, whether they are unaccompanied, separated or with their families, should have in place clear procedures for reporting any child protection concerns and adequate follow-up procedures. All centres should be independently monitored, including through consultations with child and adult refugees and migrants.15

RECOMMENDATIONS

Amnesty International therefore recommends that the Swiss authorities:

a) Ensure accountability for abuses by thoroughly, promptly and impartially investigating allegations of torture or other ill-treatment of children housed in the federal asylum centres and where evidence is found bringing perpetrators to account through the justice system and, guarantee victims right to reparation when violations of their human rights are found to have occurred.

b) Immediately take measures to protect and uphold the rights of children, including by ensuring that no child is placed in the ‘reflection room’.

c) Take measures to stop the practice of housing unaccompanied minors in federal asylum centres.

d) Urgently enhance and strengthen independent safeguarding and proactive monitoring of facilities where unaccompanied minors are housed.

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9 CRC, General Comment no. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/8 (2007), para. 18.


e) Adopt an independent and effective complaints mechanism for children and their legal representative/person of trust and ensure that they are aware of what the complaints procedure is and how they can access it.

f) Avoid subjecting children to body searches and surveillance by security guards and take steps to ensure that children feel safe in their housing.

g) Provide specialized training to personnel that deals with unaccompanied minors, including security guards and social care workers, in accordance with General Comment no. 6 (2005).

h) Strengthen guardianship mechanisms and ensure that enough qualified and trained social educators are available in the facilities to provide gender-responsive protection and assistance to all unaccompanied children.

CHILDREN AND THE NEW ANTI-TERRORISM LAWS

Amnesty International would like to further draw your attention to the recently voted anti-terrorism bill\(^6\) that gives the Federal Office of Police (fedpol) exhaustive powers to target "potential terrorist offenders", including children as young as 12, by ordering preventive administrative measures, such as house arrest, travel bans, obligations to report at the police station, prohibition of contact with specific persons, and electronic surveillance. The “Federal Act on Police Measures to Combat Terrorism”\(^1\) pre-emptively restricts a person’s liberty without charge or trial and includes a vague and overly broad definition of “terrorism”.

Amnesty International has repeatedly criticized the law\(^6\) and warned that it would unlawfully limit a person’s liberty, movement, expression, association, privacy, family life and right to work simply based on a vague notion that they might - in the future - pose a threat to national security. The law introduces a vaguely worded definition of terrorism that means anyone deemed by the authorities to be ‘spreading fear’ with political intentions could be targeted, even if they have not made any threat of violence or committed any criminal offence. The Federal Office of Police enjoys a high degree of discretion when issuing administrative control orders, without effective safeguards. Preventive measures are ordered on the basis of assumptions about a person’s intentions and future actions - and will inevitably also affect people who only allegedly pose a danger. Amnesty International is concerned that the police will use administrative measures as a way of circumventing regular criminal justice, its principles and procedural safeguards. Except for house arrest, the police will not need prior judicial authorization, but could simply base the decision on vague evidence that might indicate a person could pose a threat to national security at some future date. This threshold is contrary to the principle of legal certainty and is rife for misuse. Such discretion coupled with the absence of certain safeguards, including the right to an adversarial hearing before a court enabling the suspect to contest the reasonableness of the suspicion and ensuring their access to materials necessary for effectively challenging the measure, will put any person subject to a control order at a distinct disadvantage. The law flouts the principle that a suspect should have "equality of arms" to challenge any accusations against them and the «presumption of innocence». In order to challenge the measures, the person concerned will have to prove that they will not be dangerous in the future, which is an impossible task. The law thus creates a legally untenable «presumption of danger». Moreover, although it is possible to appeal against a measure once it is in force, the appeal has no suspensive effect.

Amnesty is also concerned by the severity of the measures, in particular house arrest. According to the case law of the European Court of Human Rights, this measure is tantamount to deprivation of liberty. The house arrest provided for in the law thus is comparable to a custodial sentence without charge, without criminal proceedings and without conviction - and could violate the European Convention on Human Rights (ECHR).

The law's broad definition of a "terrorist activity" risks prosecuting actions that are legitimate in terms of the right to freedom of expression. Thus, the law may create a climate of fear that would have a chilling effect on freedom of expression and freedom of the press, pushing many people, including political activists or journalists, to self-censor. The law also bears the danger that suspicion is no longer directed against individuals, but as a general suspicion against entire groups in which "potential terrorists" are suspected and thus will disproportionately affect certain already discriminated against groups.

In a letter addressed to the Swiss government the European human rights commissioner expressed her concern regarding the lack of sufficient legal safeguards as to the scope of the administrative measures which may be imposed by the Federal Office of Police, outside the context of criminal proceedings. She pointed out that the absence of a clear and precise definition opens the way to a broad interpretation that runs the risk of excessive and arbitrary interference with human rights and that the very term "potential terrorist" is


\(^{17}\) Loi fédérale sur les mesures policières de lutte contre le terrorisme (MPT), FF 2020 7499, available online: https://www.fedlex.admin.ch/eli/lgis/2020/2004/fr.


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liable to create stigma. The Commissioner also underlined that a severe measure, such as house arrest, potentially lasting up to nine months, could hardly be considered "proportionate and necessary in a democratic society" from a human rights perspective. In her view, it is particularly problematic that these measures can be imposed by a decision outside the criminal justice system and without a suspensive legal remedy.19

Several UN Special Rapporteurs20 also warned in a letter21 that Switzerland’s anti-terrorism legislation violates international human rights standards by expanding the definition of terrorist that could set a dangerous precedent for the suppression of political dissent worldwide. The experts expressed concern that the law’s new definition of “terrorist activity” no longer requires the prospect of any crime at all.22

Amnesty is particularly concerned that even children as young as 12 years (15 years for house arrest) are at risk of being subjected to coercive measures by the police. These measures plainly violate the State’s obligations under international human rights law relating to children, including the Convention.

According to the Convention, the best interest of the child must always be the primary consideration in any determination concerning the treatment of a child and thus must guide the assessment of the necessity and proportionality of any measure. The Committee has emphasised that "protection and care" should be provided that ensures the child’s ‘well-being’ and development.23 "Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety."24

Amnesty International is also concerned about the potential effects of stigmatisation of minors, due to their possible designation as ‘potential terrorists’, and the negative implications that could result from this, including further marginalisation and discriminatory treatment in different social contexts. Due to their age, children’s reasoning and cognitive abilities are still developing and consideration should be given to both their vulnerabilities as well as to their particular capacities, which differ from those of adults. According to UNODC “children recruited and exploited by terrorist and violent extremist groups should be considered and treated primarily as victims of crime. This means that there is a need to protect, respect and fulfil the rights of all child victims, regardless of alleged involvement in terrorism-related or other criminal offences as offenders, or of the alleged risks they may pose in committing future terrorism-related offences. It is highly important to ensure that efforts are made to prevent the secondary victimization of these children.”25

The Convention provides that children in conflict with penal law shall be treated in a manner that builds up their “sense of dignity and worth”, reinforces their “respect for the human rights and fundamental freedoms of others”, takes into account their age and promotes “the child’s social reintegration and the child’s assuming of a constructive role in society”.26 By ratifying the Convention, Switzerland has committed to giving priority to resocialisation in dealing with children in the justice system. This principle should apply a fortiori in the context where no criminal offence has been committed.

Amnesty International is particularly concerned that the house arrest provided for in the law is not compatible with the Convention. In accordance with Article 37 of the Convention, deprivation of liberty should be imposed only as a measure of last resort and for the “shortest appropriate period of time”. The due process rights of children should be duly safeguarded in this context.

According to the UN Special Rapporteurs, the adverse effects of the law on human rights could be profound, particularly when applied to children and with regard to the right to education of children. They pointed out that “the interference with the right to education can be particularly serious in the case of children under house arrest since it is the ‘primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities’. Therefore, education is both a means of inclusion in society and a means of economic growth, and has been widely recognised as a

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20 Ms. Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights while countering terrorism; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Ms. Irene Khan, Special Rapporteur on the Right to Freedom of Opinion and Expression; and Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief.

21 UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Comments on the proposed Anti-Terrorism Police Measures Law (Commentaires à propos du projet de loi intitulé “Loi fédérale sur les mesures policières de lutte contre le terrorisme”), 26 May 2020, https://sccombeports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25305.


23 UN Committee on the Rights of the Child, General Comment N°14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (2013), para. 71.

24 Ibid.


26 Article 40 UN Convention on the Rights of the Child.
fundamental element in preventing and countering terrorism and violent extremism. As such, any restrictions on education can have negative consequences for the effective prevention of violence and polarisation in society.”27

Article 16 of the Convention establishes children’s right to privacy. This applies to all settings of children’s lives and to all circumstances, including their relationships and communications with others, medical advice and treatment, counselling and surveillance. The Committee has stressed that “any surveillance of children together with any associated automated processing of personal data, shall respect the child’s right to privacy and shall not be conducted routinely, indiscriminately, or without the child’s knowledge, or in the case of very young children their parent or caregiver, and where possible the right to object to such surveillance”.28

RECOMMENDATIONS

Amnesty International therefore recommends that the Swiss authorities:

- Urgently reform counter terrorism provisions so that all measures are compliant with international human rights law and ensure that any decision to subject minors to measures require the child’s best interest to be a primary consideration.
- ensure that the human rights of children, including the right to liberty, movement, expression, association, privacy, family life and to education are protected, respected and fulfilled in the context of counterterrorism and that children who are suspected to pose a risk in committing future terrorism-related offences are considered as victims and not as perpetrators.

27 UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Comments on the proposed Anti-Terrorism Police Measures Law (Commentaires à propos du projet de loi intitulé “Loi fédérale sur les mesures policières de lutte contre le terrorisme”), 26 May 2020, available online: https://spcomreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25305, p. 12.